WA 362/2006
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS,
CHIEF JUSTICE(ACTG.)
THE HON'BLR MR JUSTICE H.N.SARMA

The private respondent No.4 namely, L. Akuto Sema filed WP(C) No.207(K)/2003 challenging the legality and validity of the Eviction Notice No.Rev-11/90-D/7012-16 dated 11.9.2003 issued by the Deputy Commissioner, Dimapur, Nagaland. By the said notice, the respondent No.4-writ petitioner was directed by the Deputy Commissioner, Dimapur in exercise of the powers conferred u/s 165(3)(a), (b) and (c) of the Assam Land and Revenue Regulation, 1886 and Rule 10 and 12 of the said Rules to vacate the land described therein which is stated to have been allotted to Shri Satoi Sema, the present appellant. A similar notice was also issued on the same date by the Deputy Commissioner, Dimapur to the concerned tenants who had been in occupation of the said land as tenant under the respondent No.4.

2. The learned Single Judge vide judgment and order dated 25.8.2006 while setting aside and quashing the aforesaid eviction notices on the ground interalia that the said notice was not followed by any show cause notice and notices were sought to be evicted without giving any opportunity to show cause against the proposed action, remanded the matter back to the Deputy Commissioner, Dimapur directing him to allow to file objection by the writ petitioner.

3. We have heard Mr P. Choudhury, learned counsel for the appellant; Mr BR Dey, learned senior counsel for the respondent No.4 and Ms T. Khro, learned State counsel.

4. The pleadings of the parties as well as the materials on record available before us disclose that there appears to have a genuine dispute regarding actual physical possession of the disputed land and claim of right to possess the same. Such dispute relates to whether the said land forms part of Patta No.809, Dag No.18/854 of Block No.7, as claimed by the appellant, or as to whether it falls within Patta No.211, Dag No.243 of Block No.7, as claimed by the respondent No.4-writ petitioner.

5. On the complaint of the appellant, regarding encroachment of his land as stated above, the Deputy Commissioner, Dimapur, after causing a survey by revenue staff, issued the impugned notice dated 11.9.2003 which as discloses about the survey conducted by the Deputy Commissioner through the Revenue Staff, to ascertain the ground reality. The allegation of the writ petitioners is that the revenue staff conducted the survey behind his back and as such he could not place the relevant facts in support of his claim over the disputed land. It is not disputed that the said survey was conducted by the Deputy Commissioner, Dimapur without notifying the petitioner. The basis of issuing the impugned notice being the findings of the said survey report, in our considered opinion, it would be just, fair and proper if such a survey is conducted in presence of both the parties in the field.

6. Accordingly, we dispose of this appeal with the direction that the Deputy Commissioner, Dimapur shall cause a survey over the disputed land in presence of both the parties so that they can raise their respective claim pertaining to their title and possession over the disputed land. The appellant and the respondent No.4 will also be entitled to submit their written reply/objection as directed by the learned Single Judge, within a period of 30 days, if not already filed. On getting the factual position cleared upon such survey, the Deputy Commissioner, Dimapur shall take appropriate action in accordance with law, taking note of the results of such survey to be conducted as indicated above on the complaint already filed by the applicant. The entire exercise shall be completed as early as possible, preferably within a period of three months from today.

7. In the result, the appeal stands disposed of, with the aforesaid modification of the order passed by the learned Single Judge to the extent indicated above.